

adjudgers, though within year and day ;—that if he was not the first, then indeed the subject having got the first judgment would exclude the King's prerogative by the act of Henry VIII. ;—but then the Crown *jure communi* would be preferred *pari passu*,—which was giving up the topics in the petition ; and if the Crown's adjudication was without year and day of the first, then he would be quite excluded. At advising, the pursuer insisted on the topics in the petition,—as to which I gave my opinion that the King's prerogative as to all debts due to him, could not be called a law concerning the regulation of trade customs and excise, and therefore not extended to Scotland by the 18th article of Union, and had it been so understood, could not have escaped the observation of our Parliament 1707, or passed without opposition, which yet by the minutes of the Parliament it appears that it did ; and therefore the act 6th *Annæ*, instead of being correctory of the articles, was a split new law ; that the King's preference for all his debts in England was the prerogative of the Crown, as well as that he could not be a joint tenant, and was gradually minced down from being much more grievous by sundry acts till that of Henry VIII. ; but that prerogative of the Crown, though preserved as to goods and chattels, was declared not to take place as to our land rights, so far as inconsistent with the laws of Scotland ; and as it was now admitted that the Crown's debt could not affect our land rights otherwise than by adjudication in this Court or voluntary infeftment, that adjudication or infeftment cannot affect them further than they ought to be liable by the laws of Scotland, and the laws of Scotland are declared to be the rule of judging, and the general laws have been sometimes held not to take away the right or privilege of the Crown, yet it cannot be maintained that those rights and privileges are directly the object of those laws ; and I see no reason why the words of that clause should not take away that privilege (or rather prevent its extending to land estates in Scotland) as well as the privilege of a preference or real lien from the date of the contracting the debt, where it is a bond or contract, or other security, or from the suit in matters of accounts.

2dly, By the arguments at the Bar, though the King could not be a joint tenant, *i. e.* where lands are by one deed disposed to the King and a subject jointly, yet he may be a tenant in common by different deeds ; and the Lord Advocate admitted that if there was an adjudication before his, he might be preferred *pari passu*,—and if he had adjudged from Burnet an adjudication that he had of another person's preferable only *pari passu* with other creditors, he could on that adjudication have no other preference than Burnet. Justice-Clerk spoke next, sometimes for the creditors, and sometimes consented to the President's reasoning, and at last would not vote ; neither did Leven, because he did not hear the pleading. But all the rest except the President voted adhere.

REGISTER.

No. 1. 1734, Nov. 15. HUGH SOMMERVELL, *Supplicant*.

THE Lords found the party not obliged to give a receipt, nor the clerk answerable for the principal ; but ordained the clerks to mark on the back of the copy left, or the margin of the minute-book, the persons name to whom the principal writ is returned.